

**Congress of the United States**  
**Washington, DC 20515**

January 24, 2006

Chairman Jim Ramstad  
Subcommittee on Oversight  
Committee on Ways and Means  
U.S. House of Representatives  
1102 Longworth House Office Building  
Washington D.C. 20515

Ranking Member John Lewis  
Subcommittee on Oversight  
Committee on Ways and Means  
U.S. House of Representatives  
1102 Longworth House Office Building  
Washington D.C. 20515

Dear Chairman Ramstad and Ranking Member Lewis:

We are writing to bring to your attention recent, troubling allegations about the Internal Revenue Service (IRS), and how it conducts and reports its enforcement duties. These allegations, in concert, create questions about how far the IRS has come in enforcing the tax laws equitably and openly. We ask that you hold hearings to determine the veracity of these reports, and to examine whether IRS enforcement needs greater legislative oversight.

A recent New York Times article and subsequent editorial ("I.R.S. Is Sued on Failure to Release Tax Data" - 1/10/06, and "What Is the I.R.S. Trying to Hide?" - 1/17/06, enclosed below), allege that the IRS is withholding information on how thoroughly and how often the Service audits large corporations and the wealthy, following evidence that enforcement had fallen off in 2003. This is especially troubling in light of the over \$300 billion tax-gap reported by the IRS every year.

Meanwhile, the National Taxpayer Advocate's (Advocate) recent Report to the Congress argued that one of the "most serious problems encountered by taxpayers," is the fact that the IRS Questionable Refund Program (QRP) is withholding refunds from thousands of taxpayers who are suspected of committing tax fraud, without their knowledge, and often without merit (Report language is enclosed below). The Advocate determined (through a random sampling of cases in which taxpayers requested assistance) that 75% of the taxpayers affected by QRP are low-income, and 80% received a full or partial refund (66% of the taxpayers affected received a full refund). This morning IRS Commissioner Mark Everson announced that he has directed a review of the Questionable Refund Program, and we are eager to hear the results of this review.

The IRS is the federal agency with perhaps the important and consistent contact with Americans. We must strive to give the American people the information they deserve, and the confidence that their government is enforcing the law without prejudice. If the IRS is favoring any taxpayer or set of taxpayers, the public and their representatives have a right to know.

We look forward to getting the opportunity to hear more about what is happening in IRS enforcement, and to help you both in finding ways to ensure that the tax laws we write are fairly enforced.

Sincerely,

A handwritten signature in black ink that reads "Ben Cardin". The signature is fluid and cursive, with the first name "Ben" and last name "Cardin" clearly distinguishable.

Benjamin L. Cardin  
Member of Congress

A handwritten signature in black ink that reads "Rahm Emanuel". The signature is fluid and cursive, with the first name "Rahm" and last name "Emanuel" clearly distinguishable.

Rahm Emanuel  
Member of Congress

Enclosures

# I.R.S. Is Sued on Failure to Release Tax Data

By DAVID CAY JOHNSTON

Records showing how thoroughly the Internal Revenue Service audits big corporations and the rich, and how much it discounts the additional taxes assessed after audits, are being withheld from the public despite a 1978 court order requiring their disclosure, according to a legal motion filed last week in federal court in Seattle.

For decades, the information was given at no charge to a professor at Syracuse University, Susan B. Long, who made it available on the Internet at [trac.syr.edu](http://trac.syr.edu), with tools for people to conduct their own analyses.

Much of what the public knows about the efficiency, effectiveness and evenhandedness of the revenue service and other big federal agencies is based on the figures that Professor Long collects and posts.

In May 2004, the service told her that it would not provide the information and ordered its statisticians to stop answering her questions. It also advised her that if it ever did make the data public again, the information would cost \$12,000 a month to receive electronic copies.

Professor Long, whose suit resulted in the court order in 1978, when she lived in Seattle, asked the federal court there to enforce that order, which instructed that the data be turned over without charge. Eric M. Stahl of Davis Wright Tremaine in Seattle, who is handling the case without charge, said the earliest hearing date would be Jan. 27.

The senior national spokesman for the tax agency, Frank Keith, wrote to Professor Long in June 2004 that he had lawyers examine her assertion that the agency was required to provide the data. After extensive research, Mr. Keith wrote, the lawyers concluded that no court order existed

and that "accordingly, the I.R.S. is not in violation of any standing injunctions."

Professor Long responded by sending Mr. Keith a copy of the order. Mr. Keith said no one now at the agency was aware of it.

"We thought we were providing this information voluntarily," he said.

The agency has no plans to release the information, Mr. Keith said Friday. He argued that Professor Long's latest requests went far beyond the order, covering costly de-

**Information on audits  
used to be free and  
readily available.  
Now it is neither.**

tailed information that could inadvertently allow the identification of specific taxpayers.

Professor Long said that was false. "There is no change in what we have asked for, and they know it," she said.

"The I.R.S. simply has no regard for court orders," Professor Long said, adding that other federal agencies whose information she collects are also obstructing her.

Researchers, reporters, lobbyists and others have argued that government agencies have for several decades become less open. That perception accelerated after the Sept. 11 attacks, drawing complaints from among others, Senator John Cornyn, Republican of Texas.

President Bush signed an executive order last month "to ensure ap-

propriate agency disclosure of information." In a meeting with newspaper editors last April, the president said, "The presumption ought to be that citizens ought to know as much as possible about the government decision making."

A spokesman for the White House, Trent Duffy, said he was unaware of the problems that Professor Long raised but that he would look into "agency specific complaints."

Mr. Keith said political appointees played no role in the decision to withhold the data.

"Decisions regarding the information to be made available to Professor Long," Mr. Keith said, "have routinely and consistently been made by career employees concerned only with how much of an administrative burden is involved, how much taxpayer money are we spending to meet this."

Among the withheld information are figures on how many hours are devoted to audits of large corporations and rich individuals, a basic measure of the thoroughness of the audits.

Among other findings, Professor Long's information has shown that in 1999 the poor were more likely than the rich to be audited.

David Burnham, co-director with Professor Long of the Transactional Records Access Clearinghouse, which collects raw government data, said the withheld information made it impossible to evaluate the intensity of audits. Mr. Burnham noted that the withheld data included figures that indicated how much auditors say is owed in extra taxes, but that the tax agency lets taxpayers negotiate down.

"It is simply impossible to evaluate the I.R.S. without this data," Mr. Burnham said, "and they know it."

January 17, 2006

Editorial

What Is the I.R.S. Trying to Hide?

The attributes that allow the Internal Revenue Service to do its job - power and pervasiveness - are the same ones that create the potential for the mistreatment of taxpayers. To prevent abuse, the public must have a steady stream of facts and figures on how the agency collects taxes.

But as The Times's David Cay Johnston reported last week, after years of providing such data, the I.R.S. is now balking. A motion filed recently in federal court asserts that the agency is defying a longstanding court order requiring it to release audit statistics. The information in question shows how thoroughly the I.R.S. audits corporations and rich taxpayers compared with others, how much time it spends on audits, and how much additional tax is recommended. The figures are crucial in gauging the agency's fairness, efficiency and effectiveness.

The motion was filed by Prof. Susan Long, who teaches statistics at Syracuse University. In 1974, while writing her dissertation, Professor Long sued the I.R.S. for access to agency statistics. In 1976, she won an order entitling her to the audit data on an ongoing basis. Today, much of what the public knows about the I.R.S. is based on data she has gathered and, since 1992, posted online at [trac.syr.edu](http://trac.syr.edu).

In May 2004, the I.R.S. refused to release figures Professor Long had requested. The timing was curious. A month earlier, she had posted data showing sharply fewer corporate audits in 2003 and had critically contrasted the data with public comments in early 2004 by the I.R.S. commissioner, Mark Everson, about cracking down on corporate wrongdoing. The I.R.S. says the events aren't connected.

First, the agency told Professor Long that it was under no obligation to provide the data. Reminded of the court order, the I.R.S. now says that Professor Long's requests have become excessive and could inadvertently reveal the identities of taxpayers. Professor Long simply asks the court to enforce its order. She deserves to prevail again.

## NATIONAL TAXPAYER ADVOCATE 2005 ANNUAL REPORT TO CONGRESS

### EXECUTIVE SUMMARY

#### THE MOST SERIOUS PROBLEMS ENCOUNTERED BY TAXPAYERS

Internal Revenue Code § 7803(c)(2)(B)(ii)(III) requires the National Taxpayer Advocate to describe at least 20 of the most serious problems encountered by taxpayers. This year's report describes 21 problems. In each case, the report includes the National Taxpayer Advocate's description of the problem, the IRS's response, and the National Taxpayer Advocate's final comments and recommendations. This format provides a clear picture of which steps have been taken to address the most serious problems and which additional steps the National Taxpayer Advocate believes are required.

The 21 problems described in the report are as follows:

**1. Trends in Taxpayer Service.** As the IRS proposes to allocate more resources to collection, examination, and criminal investigation functions and fewer resources to taxpayer service functions, the IRS is also increasing efforts to "migrate" taxpayers toward electronic services and away from face-to-face contact. Before altering the mix of service and enforcement, the National Taxpayer Advocate believes the IRS should spend more time studying what types of services different taxpayer segments need and how best to deliver these services to help taxpayers remain compliant. The National Taxpayer Advocate recommends that the IRS undertake a research-driven needs assessment, from the taxpayers' perspective, to help identify what services taxpayers need and want and how best to deliver them. An assessment of needs will also help identify groups of taxpayers that may be resistant to, or unable to access, certain services. Once the IRS conducts a detailed assessment and understands how any proposed changes to taxpayer service may affect compliance, the IRS should develop a detailed strategy for migrating taxpayers from the current to the proposed model of delivering taxpayer service.

**2. Criminal Investigation Refund Freezes.** The IRS Criminal Investigation function (CI), through its Questionable Refund Program (QRP), places a "freeze" on hundreds of thousands of refund claims each year that it believes may contain indicia of fraud. CI personnel currently review the refund claims and "determine" whether they are fraudulent – without notifying taxpayers that their claims are under review and without giving taxpayers an opportunity to present documentation supporting their positions. Last year, the Taxpayer Advocate Service (TAS) received more than 28,000 requests for assistance from taxpayers whose refunds had been frozen. TAS studied a randomly selected sample of nearly 500 cases to determine the ultimate disposition of these cases. When TAS assisted the taxpayers, CI ultimately agreed to issue the full amount of the refund claimed (or more) in 66 percent of the decided cases and to issue a partial refund in an additional 14 percent of the decided cases. Thus, taxpayers received a full or partial refund in 80 percent of frozen-refund cases brought to TAS. The median Adjusted Gross Income (AGI) of these taxpayers was \$13,330, and the median refund was \$3,519. Thus, the refund constituted, on average, more than 26 percent of the claimant's AGI for the year, and the taxpayers were required to wait, on average, more than 8-1/2 months to receive their refunds. The National Taxpayer Advocate believes that the QRP is an important program to protect against tax fraud, but the IRS must implement procedures to notify taxpayers that their refunds have been frozen, provide taxpayers with an opportunity to submit documentation, and bring cases to a quicker resolution.